

U.S. Pat. App. No.: 09/783,146
Atty. Docket No.: 005313.00003

the judicially created doctrine of obviousness-type double patenting over claims 1, 10, 16 and 23 of copending U.S. Patent Application No. 09/782,593.¹ Applicants respectfully traverse this rejection, and courteously ask for its reconsideration.

Applicants courteously urge that the subject matter of claims 1, 20, 38 and 47, are, in fact, patentably distinct from the subject matter of claims 1, 10, 16 and 23 currently pending in U.S. Patent Application No. 09/782,593. For example, claim 1 of this application recites that the second computer, which receives and decrypts data records transmitted from the first computer, transmits session information for encrypting and decrypting the data records to a third computer. This feature is not recited by any of claims 1, 10, 16 and 23 of U.S. Patent Application No. 09/782,593.

Similarly, claim 20 of this application recites that the proxy server transmits session information including the previously shared encryption key for use in decrypting the plurality of data records to another server. Claim 38 then recites a third computer coupled to the second computer and having a cache memory for storing at least the encryption key, while claim 47 recites transmitting session information for decrypting the encrypted data records to a second computer. These features likewise are not recited by any of claims 1, 10, 16 and 23 in U.S. Patent Application No. 09/782,593.

In making this rejection, the Examiner simply has concluded that these features are

¹ U.S. Patent Application No. 10/248,629 is entitled "Central Key Authority (CKA) Database for User Accounts in ABDS System," and names Anne M. Wheeler et al. as inventors. This patent application appears entirely unrelated to the instant application. Moreover, the text supporting the obviousness-type double patenting rejection refers to U.S. Patent Application No. 09/782,593 rather than to U.S. Patent Application No. 10/248,629. Accordingly,

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obvious without providing support for these conclusions in either the prior art or by a reasoned analysis of the routine knowledge of one of ordinary skill in the prior art. For example, in rejecting claim 1, the Examiner argued that:

[I]t would have been obvious to one of ordinary skill in the art to transmit session information to another computer for the purpose of backup or secure transmission of data records. (See Office Action, page 4, lines 1-4.)

The Examiner has not explained, however, why one of ordinary skill in the art would bother to obtain a backup of session information for encrypting and decrypting communications between two computers, much less why one of ordinary skill in the art would make that backup by transmitting the session information to a third computer rather than simply storing it in a remote storage device, such as a hard drive. Similarly, the Examiner has provided no reasoning to explain how storing the session information on a third computer would provide secure transmission of data records. Presumably, one of ordinary skill in the art would understand that the encrypted communication between the first computer and the second computer would provide secure transmission of data records without ever involving a third computer.

Accordingly, Applicants respectfully submit that the Examiner has not made out the *prima facie* showing of obviousness required to sustain the outstanding obviousness-type double patenting rejection of claims 1, 20, 38 and 47. Further, Applicants courteously urge that claims 1, 20, 38 and 47 are patentably distinct from the subject matter of claims 1, 10, 16. It is therefore requested that the outstanding rejection of claims 1, 20, 38 and 47 under the judicially created

Applicant understands that the reference to U.S. Patent Application No. 10/248,629 is in error.

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doctrine of obviousness-type double patenting be with withdrawn.

Next, claims 1-4, 10-12, 15, 16, 20, 24, 25, 27, 29, 34, 38, 39, 43, 45, 47, 48, 54, 56, and 57 were rejected under 35 U.S.C. §102(e) over U.S. Patent No. 6,216,229 B1 to Fischer.

Applicants respectfully traverse this rejection, and courteously ask for its reconsideration as well.

As previously noted, each of the claims in this application generally relate to a method or system that (1) transmits encrypted data records between two computers during a communication session, and (2) provides information relating to that communication session to another computer (i.e., a computer outside of that communication session).

Applicants respectfully submit that the Fischer patent does not teach or suggest these recited features of the invention. The Fischer patent is directed toward a technique for preventing unauthorized access to confidential information provided to an escrow trustee. Accordingly, while the Fischer patent does teach a user providing encrypted escrow information to an escrow trustee, nothing in the Fischer patent teaches or suggests that the escrow information is related to the encryption used to encrypt it. In fact, that arrangement simply would not make sense in view of the stated purpose of the Fischer patent to prevent the inadvertent betrayal by a trustee of escrowed digital secrets. Under the Fischer system, the escrow agent is not intended to decrypt the escrow information, but only to return it to the trustee under predefined circumstances.

Thus, the Fischer patent teaches using conventional public/private key encryption to encrypt the transferred escrow information, thereby obviating the need for the user to provide the escrow trustee with separate encryption information. (See, e.g., column 10, lines 10-18.) More particularly, there is nothing in the Fischer patent that would teach or suggest providing another

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computer with information relating to the communication session between the user and the escrow trustee, as suggested by the Examiner.

In maintaining this rejection, the Examiner dismissed Applicants' arguments, stating:

[I]t is noted that the features upon which applicant relies (i.e.,") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. (*Id.*, page 2, line 19 to page 3, line 1.)

Applicants strongly object to this assertion by the Examiner. While Applicants did use the phrase "(i.e., a computer outside of that communication session)" to provide the Examiner with a summary of Applicants' arguments, Applicants also cited specific language in each independent claim that recites features not taught or suggested by the Fischer patent.

In particular, Applicants noted that claims 1-19 recite "encrypting and transmitting data records between [a] first computer and [a] second computer using an unreliable communication protocol...in the second computer, receiving and decrypting the data records...and...in the second computer, transmitting session information for encrypting and decrypting the data records to a third computer." The Fischer patent does not teach or suggest "transmitting session information for encrypting and decrypting the data records to a third computer."

Applicants also specifically pointed out that claims 20-37 similarly recite "using [a] nonce to encrypt each of [a] plurality of data records...transmitting the plurality of [encrypted] data records...from the client computer to the proxy server using an unreliable communication protocol...in the proxy server, decrypting each of the plurality of encrypted data records using a corresponding nonce extracted from each data record and a previously shared encryption

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key...and...in the proxy server, transmitting session information including the previously shared encryption key for use in decrypting the plurality of data records to another server." The Fischer patent does not teach or suggest "transmitting session information including the previously shared encryption key for use in decrypting the plurality of data records to another server."

Applicants further noted that claims 38-46 then recite "a first computer having a communication protocol client function operable...to transmit data records securely using an unreliable protocol...a second computer coupled to the first computer and having a communication protocol server function operable...to receive data records securely using the unreliable communication protocol...wherein the communication protocol client function encrypts each data record using a nonce and an encryption key...and a third computer coupled to the second computer and having a cache memory for storing at least the encryption key," and that claims 47-58 recite "receiving data records from [a] first computer that have been encrypted...and...transmitting session information for decrypting the encrypted data records to a second computer." The Fischer patent does not teach or suggest "a third computer coupled to the second computer and having a cache memory for storing at least the encryption key" as recited in claims 38-46, or "transmitting session information for decrypting the encrypted data records to a second computer" as recited in claims 47-58.

Accordingly, Applicants again urge that the Fischer patent does not teach or suggest the features of the invention recited in claims 1-4, 10-12, 15, 16, 20, 24, 25, 27, 29, 34, 38, 39, 43, and 45. Applicants therefore ask that the outstanding rejection of these claims over the Fischer patent be withdrawn.

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Next, claims 5-7, 22, 23, and 49-51 were rejected under 35 U.S.C. §103 over the Fischer patent in view of U.S. Patent No. 6,371,729 B1 to Camp et al. Claims 9, 13, 14, 17-19, 24, 26, 31, 32, 35-37, 40, 42, 53, 55, and 58 then were rejected under 35 U.S.C. §103 over the Fischer patent in view of prior art allegedly disclosed in Applicants' specification. Applicants respectfully traverse both of these rejections, and ask for their reconsideration.

As discussed in detail above, Applicants again submit that nothing in the Fischer patent teaches or suggests claimed features of the invention. It is respectfully submitted that neither the Camp et al. patent nor any prior art disclosed in Applicants' specification would remedy these omissions of the Fischer patent. Applicants therefore submit that no combination of the Fischer patent, the Camp et al. patent, or any prior art disclosed in Applicants' specification would teach or suggest the invention as recited in any of claims 5-7, 9, 13, 14, 17-19, 22-24, 26, 31, 32, 35-37, 40, 42 49-51, 53, 55, and 58. Applicants accordingly request that the rejections of claims 5-7, 9, 13, 14, 17-19, 22-24, 26, 31, 32, 35-37, 40, 42 49-51, 53, 55, and 58 be withdrawn.

Applicants believe that no fees are due for the entry and consideration of this Request. If, however, the Commissioner deems that one or more fees are necessary to maintain the pendency of this application, including any fees under 35 U.S.C. §1.16 and §1.17, it is respectfully requested that the Commissioner charge such fees to the deposit account of the undersigned, Deposit Account No. 19-0733.

In view of the above amendments and remarks, Applicants respectfully submit that all of the claims are allowable, and that this application is therefore in condition for allowance.

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Applicants courteously ask for favorable action at the Examiner's earliest convenience.

Respectfully submitted,

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